

E1-3023

Supervisors:

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James Hostetter, Sr.
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Frank Peiffer
Richard C. Drumm, Jr.*

*Chair
Vice-Chair
Treasurer
Supervisor
Supervisor*

MARTIC TOWNSHIP SUPERVISORS

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*Judy Ament, Secretary
Matt DiLoreto, Zoning Officer
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June 12, 2007

Surface Transportation Board
Attn: Mr. Troy Brady
Environmental Analysis, Suite 1100
395 East Street, SW
Washington DC 20423-0001

STB Docket No. AB 167 (Sub-No. 1095X)

Dear Mr. Brady,

Since the Martic Township Board of Supervisors approved a motion at their meeting on June 4, 2007 to accept the most recent Memorandum of Agreement and as per Frank Peiffer's request, enclosed please find the most recent Memorandum of Agreement that is signed and completed for your information.

If you have any questions, please feel free to contact Frank Peiffer at (717) 284-4449.

Sincerely,



Judy M. Ament
Martic Township Secretary

RECEIVED

MAY 30 2007

MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
AND
NORFOLK SOUTHERN RAILWAY COMPANY

REGARDING DOCKET No. AB-167 (Sub-No. 1095X)
CONSOLIDATED RAIL CORPORATION
- ABANDONMENT EXEMPTION -
LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA

WHEREAS, in 1989 Consolidated Rail Corporation (Conrail) filed a notice of exemption with the Interstate Commerce Commission (ICC)¹ pursuant to 49 CFR 1152.50 seeking an exemption from the requirements of 49 U.S.C. 10903 to abandon a segment of a line of railroad commonly known as the Enola Branch. The Enola Branch extends generally westward from Milepost 0.0 in Parkesburg, Chester County, PA to Milepost 33.9 at Port in Lancaster County, PA.² The Enola Branch passes through the Townships of Sadsbury, Bart, Eden, Providence, Martic, Conestoga, and Manor, and the Borough of Quarryville in Lancaster County, and the Township of West Sadsbury, the Borough of Atglen, and the City of Parkesburg in Chester County;

WHEREAS, the portions of the Enola Branch that are the subject of this Memorandum of Agreement are those between Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9.³

1 The ICC Termination Act of 1995, Pub. L. No. 104-88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Surface Transportation Board (Board), effective January 1, 1996.

2 Conrail described the Enola Branch in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.

3 Conrail sold the portion of the Enola Branch from Milepost 1.5 to Milepost 4.0 to the Southeastern Pennsylvania Transportation Authority in 1996. On June 23, 1997, Norfolk Southern Railway Company (NSR) and CSX Transportation Inc. sought permission from the Board to acquire Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. CSX Corp., et al.-Control-Conrail Inc., et al., 3 S.T.B. 196 (1998). The Enola Branch property was allocated to Pennsylvania Line LLC, a subsidiary of Conrail, as part of the Conrail Acquisition transaction. NS operates the Pennsylvania Line LLC allocated assets under an operating agreement approved by the Board. This Memorandum of Agreement pertains to the NSR-controlled portions of the Enola Branch.

WHEREAS, the ICC issued a decision served February 22, 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the Pennsylvania State Historic Preservation Officer (SHPO), that Conrail take no steps to alter the historic integrity of the bridges—the only properties on the Enola Branch that had been identified as potentially eligible for inclusion on the National Register of Historic Places (National Register)—until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f; .

WHEREAS, the purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, pending negotiations to transfer the Enola Branch for interim trail use/railbanking under 16 U.S.C. 1247(d) (Trails Act) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful,⁴ the agency resumed the NHPA process;

WHEREAS, while the Board's Section of Environmental Analysis (SEA) was working through the steps of the NHPA process, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire Enola Branch;

WHEREAS, the Board denied FAST's request in a decision served October 2, 1997, and FAST filed a petition for reconsideration;

WHEREAS, the Board, in a decision served August 13, 1999, believing that the only part of the NHPA process still open was the development of mitigation for bridges determined to be historic, denied FAST's petition for reconsideration of the 1997 decision and FAST then sought judicial review;

WHEREAS, in Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Bd., 252 F.3d 246 (3rd Cir. 2001), the United States Court of Appeals for the Third Circuit vacated the Board's 1997 and 1999 decisions and remanded the case back to the Board, ruling that the Board had failed to comply fully with the procedural requirements of the NHPA;

⁴ The ICC terminated the trail-use negotiation condition with respect to the Enola Branch in a decision served April 19, 1993.

WHEREAS, SEA has reinitiated the Section 106 historic review process pursuant to the court's remand and the procedural provisions of the NHPA including FAST and 13 state and local government entities as consulting parties;

WHEREAS, SEA has consulted with the Advisory Council on Historic Preservation (ACHP), the SHPO, and NSR, and in two Notices to the Parties and two public meetings solicited oral and written comments from the consulting parties (all of whom are either invited signatories or concurring parties to this Memorandum of Agreement) and the public regarding possible use of the portions of the Enola Branch that are subject to this Memorandum of Agreement for interim trail use/railbanking. Assuming that no arrangement for interim trail use/railbanking is reached, completion of the mitigation phase of the Section 106 process by execution and implementation of this Memorandum of Agreement is appropriate;

WHEREAS, based on the Keeper of the National Register's 1999 finding that the entire Enola Branch is eligible for inclusion in the National Register, and in consultation with the ACHP and the SHPO, SEA has determined that the entire Enola Branch is eligible for inclusion in the National Register;

WHEREAS, based on consultation with the ACHP and the SHPO and the public comments, SEA has determined that the abandonment at issue here would adversely affect the Enola Branch;

WHEREAS, NSR already has paid to the Pennsylvania Railroad Museum \$15,437 to fund an exhibit or video of the history of the Enola Branch;

WHEREAS, based on consultation with the ACHP, the SHPO, and NSR, and considering the oral and written comments received from interested and official consulting parties, SEA has devised additional measures to mitigate the adverse effects on the Enola Branch that would be caused by abandonment;

WHEREAS, the Memorandum of Agreement executed on August 4, 2004, was allowed to expire on August 4, 2005. During preparation of the Memorandum of Agreement, NSR requested that the expiration date be changed from the normally called for three years to one year. NSR requested this shortened time frame in order to facilitate completion of its responsibilities set out in the Memorandum of Agreement. However, because of subsequent litigation initiated by Lancaster County seeking to acquire the Enola Branch through eminent domain as well as its affirmative statements indicating that it, not NSR, would be responsible for fulfilling the requirements outlined in the Memorandum of Agreement, the Memorandum of Agreement expired.¹

¹ In furtherance of this effort, on June 16, 2004, Lancaster County filed a declaration of taking in the Common Pleas Court of Lancaster County, Pennsylvania. In this filing, Lancaster County states that it has decided to use its powers of eminent domain in an effort to acquire and preserve the Enola Branch for recreational trail purposes. Moreover, in a letter dated November 17, 2004, Lancaster County filed a Motion with the Board to Remove Historic Preservation Conditions and to Grant Final Abandonment Authority to NSR in order to terminate the Board's jurisdiction in this proceeding. Furthermore, Lancaster County goes on to state in part that "...Lancaster County has agreed to undertake historic preservation activities required under the terms of the Memorandum of Understanding

However, on October 30, 2006, the Pennsylvania Commonwealth Court ruled that Lancaster County does not have the authority to seize the Enola Branch through eminent domain. The Pennsylvania Commonwealth Court also found 1) that Lancaster County does not have legal authority under County Code to take land owned by a railroad and 2) that Lancaster County's attempt to take the Enola Branch would violate a prior order by the Pennsylvania Public Utilities Commission allowing the Townships to accept the Enola Branch from NSR;²

NOW THEREFORE, the Board, the ACHP, the SHPO, and NSR agree that abandonment of the Enola Branch shall be subject to the following stipulations to mitigate the effect of the abandonment on historic properties.

STIPULATIONS

The Board shall ensure that the following measures are carried out. The Board may direct NSR (and its contractor) to assist in fulfilling these stipulations or may use an independent third-party contractor, working under SEA's supervision, direction, and control, and at NSR's expense, to assist in fulfilling these stipulations.

I. ADDITIONAL DOCUMENTATION REQUIREMENTS

NSR shall retain a professional historian to document³ and conduct archival research of the history of the Enola Branch rail line (including the segments of the Enola Branch from Milepost 0.0 to Milepost 1.5 and Milepost 4.0 to Milepost 33.9 and appropriate representative structures). The documentation shall be completed in accordance with the relevant state standards as specified by the SHPO and outlined in the guidance document titled "How to Complete the Pennsylvania Historic Resource Survey Form." The historian shall also prepare a written report discussing the methods and results of the archival research.⁴

executed by various parties in this proceeding thereby assuring that the historic review and preservation goals of that MOU will be observed in accordance with the National Historic Preservation Act..."

On February 25, 1997, Conrail entered into a Stipulation of Settlement (Agreement) between Conrail and the Lancaster County Pennsylvania Townships of Conestoga, Martic, Providence, Eden, Bart, and Sadsbury and the Chester County Township of West Sadsbury. In this Agreement, Conrail agreed to convey the real property comprising the Enola Branch Rail Line (Line) that was located in each Township, except certain property in Conestoga Township beyond Milepost 27.0 and the property in West Sadsbury, to the respective Townships.

2 On October 9, 1997, The Pennsylvania Public Utilities Commission approved Agreement allowing the Townships to take ownership of the Line. This Agreement was affirmed on appeal to the Supreme Court of Pennsylvania on June 29, 1999.

3 The professional historian will meet the "Secretary of Interior's Professional Qualification Standards" as specified in Section 800.2(a)(1). 48 FR 44738-9; see <http://www2.cr.nps.gov/laws/ProfQual83.htm>).

4 Archival research conducted from information or records supplied by or available at the railroad, the Pennsylvania Historical and Museum Commission, the Pennsylvania State Archives, the Lancaster County Historical Society, the Southern Lancaster Historical Society, the Chester County Historical Society, the Railroad Museum of

Prior to the commencement of documentation efforts, the Board, the SHPO, and NSR shall work together to develop a list of representative structures on the Enola Branch. Documentation of these structures shall serve to document the historic qualities of the line as a whole.

Upon completion of the documentation and archival research, NSR shall consolidate all of the information into one cohesive document and submit the document to the Board's Federal Preservation Officer (FPO) (the Chief of SEA), the ACHP, and the SHPO for review.

Should it be determined that any of the historic bridges must be dismantled, NSR shall consult with the FPO, SHPO, and the consulting parties regarding the potential for any re-use of the historic materials for commemoration of the Enola Branch Rail Line.

As provided in Pennsylvania state standards, the document to be prepared by NSR shall include:

A. A Photo/Site Plan Sheet containing: (1) the historic name of the property; (2) the county; (3) noncolor-coded sketch maps or other noncolor maps showing the location of the rail line; and (4) photographs of the representative structures;

B. A Data Sheet describing: (1) the rail line, its historic function and current use, (2) the representative structures, including relevant historical and descriptive information such as the architectural and structural system classifications, the exterior materials, the width, depth, and height measurements, dates of construction and known significant changes or rebuilding, (3) the proposed disposition of the structures after abandonment, and (4) to the extent there is relevant information in railroad or local libraries, museums or archives, the cultural affiliations, associated individuals or events, and names of builders or craftsmen who constructed the rail line;

C. A Narrative Sheet, including a brief physical description of the line (current and historic physical appearances and conditions of the rail line segments and all associated structures) and a historical narrative (a summary of the history and significance of the property);

In addition to the requirements of the Pennsylvania state recordation standards, the document shall also include:

1. A written report describing the methods and results of the archival research; and
2. Copies of any relevant historical documents found pursuant to the archival research, as well as available maps of the rail line in its local context.

The Board's FPO, the ACHP, and the SHPO shall have 30 days to review and comment on the draft document. At the end of the 30 day period, NSR shall prepare a final version of the document, taking into consideration any comments received, and submit the final document to the FPO, the ACHP, and the SHPO. NSR shall also submit two (2) additional copies of the final document to the SHPO to be archived at the SHPO's office.

II. DISPUTE RESOLUTION

Disagreements over implementation of this Memorandum of Agreement shall be resolved in the following manner:

A. If the SHPO or NSR objects in writing to the Board's FPO regarding any action carried out or proposed in implementation of this Memorandum of Agreement, the FPO shall consult with the objecting party to resolve this objection. If after such consultation there is no resolution, then the FPO shall forward all documentation of the objection and attempted resolution to the ACHP, including the FPO's proposed response to the objection. Within 45 days of receipt of this pertinent documentation, the ACHP shall exercise one of the following options:

1. Provide the Board with a staff-level recommendation; or
2. Notify the Board that the objection will be referred for formal comment pursuant to 36 CFR Part 800, and complete the referral.

B. The Board shall take into account any ACHP comments or recommendations in reaching a final decision regarding the objection. The Board's responsibilities related to all undisputed actions under the Memorandum of Agreement shall remain unchanged.

III. POST REVIEW DISCOVERY

If the professional historian retained by NSR identifies a potential for unanticipated effects on historic properties, as defined in 800.16(l)(1), during the implementation of this Memorandum of Agreement, NSR shall notify the Board's FPO. The FPO shall then consult with the SHPO to determine whether additional mitigation measures are necessary, and if so, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

If one or more archeological sites, additional cultural or historic resources, or human remains are discovered during NSR's salvage activities, NSR shall immediately cease all work and notify the FPO and any Federally recognized tribe that might attach religious or cultural significance to the site. The FPO shall consult with the SHPO and any such tribe to determine whether additional mitigation measures are necessary, and if so, all

signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

Any additional mitigation developed shall be consistent with the provisions of the Pennsylvania Historic and Museum Commission's Policy on the Treatment of Human Remains adopted March 10, 1993, the Native American Graves Protection and Repatriation Act, and ACHP guidance documents such as the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*.

IV. AMENDMENT

Any Signatory to this Memorandum of Agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment pursuant to 36 CFR Part 800.

V. TERMINATION

A. If the terms of this Memorandum of Agreement have not been implemented within three years of its execution, it shall be considered null and void, unless the parties agree to a written extension of time. In that event, the Board shall notify the parties to this Memorandum of Agreement, and if NSR chooses to continue with this undertaking, the Board shall reinstate review of this undertaking in accordance with 36 CFR Part 800.

B. Any signatory to the Memorandum of Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Board shall comply with 36 CFR Part 800.

VI. SCOPE OF AGREEMENT

This Memorandum of Agreement is limited in scope to the abandonment of the sections of the Enola Branch from Milepost 0.0 to 1.5 and Milepost 4.0 to 33.9, and is entered into solely for that purpose. Execution and implementation of this Memorandum of Agreement by the Board, the ACHP, the SHPO, and NSR is evidence that the Board has afforded the ACHP an opportunity to comment on the project and its effects on historic properties, has taken into account the effects of the undertaking on those properties, and has, therefore, satisfied its Section 106 responsibilities for this undertaking.

SIGNATORIES:

Advisory Council on Historic Preservation

State Historic Preservation Officer
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation

Surface Transportation Board

Norfolk Southern Railway Company

CONCURRING PARTIES:

Friends of the Atglen-Susquehanna Trail

Historic Preservation Trust of Lancaster County

Lancaster County

Lancaster County Conservancy

Lancaster Farmland Trust

Northeast Regional Field Office of the Rails-to-Trails Conservancy

Pennsylvania Department of Transportation

Quarryville Borough

Southern End Community Association

Township of Bart

Township of Conestoga

Township of Eden

Frank H. Deiffer
Township of Martic

Attest: *Judy M. Amant*
Martic Township Secretary
6/11/07

Township of Providence

Township of Sadsbury

Township of West Sadsbury